



TOWN OF EAST HAMPTON

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Planning Department
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Director

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January 8, 2016

TO: Planning Board

FROM: Eric Schantz
Senior Planner *ES. mw*

RE: Dioguardi Brick Patio Replacement – Site Plan
SCTM# 300-110-1-10
Application # A0520140016

Last Review Date: August 19, 2015

Items and Date Received: 07/23/15 Applicant submission; cover letter; 10 prints of survey, dated revised November 18, 2015

Background Information: Application was originally made to add a 27' X 6' (162 sq. ft.) brick-in-sand patio on a parcel containing a use that had existed as a pre-existing non-conforming restaurant use after the zoning of the property was changed from RB: Retail Business to A: Residence in 1984 and which has expanded and changed without approvals. The brick-in-sand patio is no longer proposed. The application now is to legalize a number of structures and additions built without site plan and other required approval as well as to relocate a number of structures and construct an expanded on-site parking lot and new second exterior bar on the west side of the property.

The subject parcel is roughly ½ acre in lot area and is situated in Amagansett along the Napeague stretch on the north side of Montauk Highway. The parcel is zoned A: Residence and is within the Flood Hazard Overlay District as it is wholly within the Zone AE el. 10 flood zone. It is roughly 75% cleared of native vegetation and areas of remaining vegetation are dominated by invasive species, particularly Japanese Black Pine (*Pinus thunbergii*). The property is severely encumbered by expansive areas of freshwater wetlands on the roughly 1 acre Town-owned nature preserve immediately to the east as well as two small pocket wetlands on the property to the immediate east (Lot 9).

The property was the subject of previous Planning Board and Zoning Board of Appeals applications in 1991-1992 and again in 1998-1999. These applications requested approval for various accessory structures such as decks, awnings and storage structures. None of

these applications were granted approval as it was noted at the time for each proposal that a substantial amount of other additions had been made to the property without the benefit of necessary approvals.

The Building Inspector has made numerous previous determinations regarding what structures have been built on-site (or which are proposed at this time) which have not received site plan approval. The most recent determination was dated April 14, 2015 and is attached and incorporated in this memo. The most recent site plan that was submitted dated November 18, 2015 contains changes from the prior site plan that was the basis of the April 14, 2015 Building Inspector determination letter..

Issues for Discussion:

Revised Site Plan

The applicants have submitted a revised site plan (prepared by Saskas Surveying Company dated last revised November 18, 2015) which illustrates yard setbacks as well as wetland setbacks for all structures and additions (both already built and proposed) which require site plan approval at this time. Based upon this survey, a Natural Resources Special Permit (NRSP) and the following variances will need to be granted by the Zoning Board of Appeals:

- Variances (8 total) of 47.2', 49', 62.2', 61.9', 57.7', 55.7', 66.7', and 77.4' from section 255-4-30 C of the Town Code (Wetland Setbacks) for an expanded parking area, grease container, garbage compactor, storage container (1), storage container (2), storage container (3), additions to existing one-story restaurant building, and stone patio to be situated 52.8', 51', 37.8', 38.1', 42.3', 44.3', 33.3', and 22.6', respectively, whereas a minimum setback of 100' is required
- Variances (3 total) of 15', 30', and 30' from section 255-11-10 (Table of Dimensional Regulations – Accessory Structure Front Yard Setbacks) for an expanded parking area, stone patio on the west side of the restaurant building, and stone patio on the south and east side of the restaurant building to be situated 15', 0', and 0' from the front lot line, respectively, whereas a minimum setback of 30' is required.
- A variance of 8.8' from section 255-11-10 (Table of Dimensional Regulations – Principal Building Front Yard Setbacks) for additions to the restaurant building to be situated 11.2' from the front lot line whereas a minimum setback of 30' is required.
- A variance of 9.5' from section 255-11-10 (Table of Dimensional Regulations – Principal Building Side Yard Setbacks) for additions to the restaurant building to be situated 5.5' from the front lot line whereas a minimum setback of 15' is required.
- A use variance from section 255-1-40 B (Nonconforming Uses) of the Town Code for the physical expansion of a non-conforming restaurant use and change to a different nonconforming use.

It also appears that a variance from section 255-11-72 D (Pyramid Law) may be needed for additions to the principal building. However, this information has not been provided. The applicants should submit an application including the most recently revised survey to the Zoning Board of Appeals at this time along with a standard pyramid diagram for the principal building (restaurant).

SEQRA

The type of action for this project could previously not be determined. The determination of the Building Inspector and the revised survey verify that the proposed project is an unlisted action. The applicants have not submitted the proper EAF Part I form (Full Environmental Assessment Form Part I) and must do so. Once this has been received, a lead agency declaration can be made. The Planning Department will ultimately recommend that the Planning Board declare lead agency status.

Nature of Proposed Project

The applicants are proposing to obtain site plan review for a number of already-built structures and additions, including new areas of stone patios, additions to the restaurant building, additional seating, a new bar on the western side of the restaurant building and accessory structures such as storage containers and a garbage compactor, as well as a new/expanded parking area. The Building Inspector has determined that this represents an expansion of a non-conforming use (restaurant).

The Planning Board should note that the property has been the subject of recent litigation (Town of East Hampton v. Cyril's, et al) in which a decision was rendered which affects review of this application (see Short Form Order of Honorable Joseph Farnetti, dated October 9, 2014 and dated received by the Planning Board on December 17, 2014). In this document, the Court finds that the bar and numerous accessory structures were added subsequent to the re-zoning of the property which rendered the use non-conforming. It found that these additions represent the expansion of a non-conforming use. It also finds that the multiple additions and accessory structures added after the change of zoning on the property were added without benefit of site plan approval and/or a Natural Resources Special Permit (NRSP) and/or variances. It is also noted in the Court's document that, as per the permit of the Suffolk County Department of Health Services, the capacity of the restaurant is 56 seats.

It is further noted that the additional seating in the stone seating area to the west of the restaurant building has been denied by the Suffolk County Department of Health Services in response to an application and several revisions that were made by the applicant to the Suffolk County Department of Health Services for approval for the increased seating.

Notwithstanding the absence of proper and complete environmental analysis, the Planning Department strongly recommends denial of the proposed site plan on the basis that it is not in-keeping with the purposes of site plan review. Section 255-6-10 of (Site Plan Review – Purpose) of the Town Code states:

“The provisions of this article are designed to assure that the design and layout of particular land uses on a lot, whether such use is a permitted, special permit or accessory use, will be such as to ensure the public safety and convenience, will be compatible with certain man-made and natural features on and off the lot and will, in all cases, comply with the letter and spirit of those provisions of this Code which pertain to such design or layout and of those provisions pertaining to the use itself.”

It is the opinion of the Planning Department that the project is not in-keeping with the above stated purpose of site plan review for multiple reasons:

- *“The provisions of this article are designed to assure that the design and layout of particular land uses on a lot, whether such use is a permitted, special permit or accessory use, will be such as to ensure the public safety and convenience...”*

The original restaurant use on this property was legally pre-existing but has been non-conforming for over 30 years and has been changed and expanded to a large bar and restaurant use. The subject property along with numerous other properties in Napeague were re-zoned from RB: Retail Business to various residential zoning designations in 1984 as part of the Town’s previous Comprehensive Plan. The anticipated traffic generated by a single-family residence is much less than that of the large bar- restaurant operation.

The bar and restaurant uses on the subject parcel have been added on-to without the benefit of site plan or other required approvals so as to increase its customer capacity, exacerbating a situation of unwanted traffic volume. The amount of seating has been increased beyond what Town and County Health Department approvals allow, which under the Town Code increases the requirement for on-site parking, which is currently insufficient, forcing patrons to park in the Montauk Highway right-of-way significant distances from the site.

Additionally, and further decreasing public safety, the bar/restaurant building has had additions without approval, and a bar constructed right up to the southern property line, which represents the boundary of the Montauk Highway right-of-way; a road with a speed limit of 55 miles per hour.

The combination of an enlarged building (accommodating more patrons), inadequate parking (forcing the patrons to park off-site and along the high speed State roadway), and a bar situated right next to the road right-of-way creates a serious detriment to public safety during the summer months and inconveniences drivers both westbound and eastbound on Montauk Highway, the only road in and out of the Montauk peninsula in this area of town.

- *“...will be compatible with certain man-made and natural features on and off the lot...”*

The additions to the bar/restaurant building and accessory structures built without

site plan and other required approvals will require the granting of at least eight (8) variances from the Zoning Board of Appeals as well as a Natural Resources Special Permit due to the proximity of freshwater wetlands. These wetlands are part of the unique habitat of the Napeague area which is characterized by low-lying dune and heath lands with sandy soils, shallow depth to groundwater, and sporadic pockets of freshwater and tidally-influenced wetlands. These areas are important to numerous species of plants and animals and the Town seeks to preserve such lands wherever possible. In keeping with this goal. The Town has purchased the neighboring property to the immediate east on which these freshwater wetlands are located and has designated this property as a Nature Preserve. All of the required variances are substantial and the on-site additions directly contribute storm water run-off to the surface waters of the adjacent wetlands, which seasonally contain standing water in close proximity to the subject property. To the knowledge of the Planning Department no drainage control structures have been installed on-site.

- *“...and will, in all cases, comply with the letter and spirit of those provisions of this Code which pertain to such design or layout and of those provisions pertaining to the use itself.”*

The Code specifically lists both restaurants and bars as a prohibited uses in the A: Residence Zoning District and the aforementioned section of the Code regarding non-conforming uses prohibits physical expansion. The proposed project, which is by definition a physical expansion of a non-conforming use is clearly in contrast to the letter and spirit of Code provisions regarding the use of this property.

Conclusion

In conclusion, once a Full EAF Part I has been submitted the Planning Board should declare lead agency status. The Board should discuss the nature of the proposed project at this time, particularly whether or not the project is in keeping with the purposes of site plan review. Once lead agency has been determined, the Planning Department will prepare a draft EAF Part II & III for the Board's review.

ES

Planning Board Consensus

Does the Board have any comments at this time regarding the nature of the proposed project?

Additional comments: _____

Additional Board Comments:



**BUILDING DEPARTMENT
TOWN OF EAST HAMPTON**

**300 Pantigo Place – Suite 104
East Hampton, New York 11937**

BUILDING INSPECTOR'S OFFICE

Phone: (631) 324-4145

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MEMORANDUM

TO: Reed Jones Chairman, Planning Board

FROM: Daniel Casey, Building Inspector

DATE: April 14, 2015

**RE: Dioguardi Site Plan (Cyril's)
2167 Montauk Hwy, Amagansett
SCTM# 300-110-1-10
Michael Dioguardi & Debra Lakind, Owners**

The following is in response to your memo dated January 20, 2015 and after an inspection by our office on April 2, 2015, regarding the clarification of improvements made without Site Plan approval, variances and or any other approvals that are required for any planned additions or modifications at the above referenced property, that are indicated on the November 25, 2014 Site Plan.

The following items either exist on the premises and or are indicated on the November 25, 2015 Site Plan and require site plan approvals, variances, or other required approvals including but not limited to certificates of occupancy and natural resources approvals.

1. Existing permeable stone driveway on west side of building.
2. Proposed and partial existing gravel parking area.
3. Septic tanks and leaching pools, and conditions.
4. Proposed stockade fence.
5. Proposed gate to container area.
6. Two (2) Existing storage containers (indicated to be removed). **(Not Removed per Inspection 4/8/15)**
7. Proposed relocated temporary dumpster.
8. Proposed relocated temporary container.
9. Two (2) Storage containers indicated to remain.
10. Existing garbage compactor.
11. Existing cooler (indicated to be removed). **(Not Removed per Inspection 4/8/15)**
12. Overhands attached to rear and sides of building.
13. Rear gravel off of building and under rear overhang.
14. Existing brick walk on east side of building (indicated to be removed). **(Not Removed per Inspection 4/8/15)**
15. Proposed crushed native stone on east side replacing brick walk.
16. Existing Brick patio on east side of building.
17. Proposed crushed native stone on eat side replacing brick patio.
18. Two unlabeled ice boxes on east side of building.
19. Front awning. (Pipe Framing only at this Time)
20. Front brick area in front of building and behind bar.
21. Existing front "table top".
22. Existing front native crushed stone area.



23. Existing sign off property in front of building.
24. Existing front patio partially off premises indicated to be removed and replaced with crushed native stone.
25. Existing deck on south west side of building.
26. Existing canopy over gravel on northwest corner of building.
27. Existing gravel seating area on west side of building.
28. Proposed exterior rear bar on west side of building.
29. Egress Lane.
30. Fence, bench, seat, awing combination on west side of gravel seating area.
31. Proposed expanded permeable stone parking.
32. Proposed potted plantings.
33. Proposed post and rail on front property line.
34. Existing of property crushed stone parking in front of building.
35. Fencing around the perimeter of the property
36. Large exterior bar and service area on the south side of the building.
37. Ice Shed.
38. Existing area of main building in excess of approved 300 square feet.
39. Any remaining interior fencing or benches, any fixed seating or tables not indicated.

Please note that this list is subject to the accuracy of the November 25, 2014 rendering, and the details of the rendering. The rendering indicates one or more structures that are not labeled as existing or proposed and are not named. The November 25, 2014 site plan continues to be reviewed and this list may change as a result of that review.

Please also note that areas on this plan may have been the subject of prior denials by the Suffolk County Department of Health Service on other agencies, and that the consideration of this plan is subject to the October 9, 2014 Supreme Court decision and any subsequent determinations of that pending litigation.

Please note that there are one or more pending Zoning Board of Appeals applications pending for this property, and that several of the improvements indicated are also the subject of current Justice Court matters.

The current use of the premises is an illegal expansion of a pre-existing, non-conforming use and the existing and proposed structures are in improper expansion of that use and of one or more pre-existing, non-conforming structures.

CC: John Whelan, ZBA Chairman / Liz Vail , Town Attorney/Joe Prokop, Counsel